

**STATE OF INDIANA
Board of Tax Review**

DAVID R. WEBB COMPANY INC.,)	On Appeal from the Johnson County
)	Property Tax Assessment Board
Petitioner,)	of Appeals
)	
v.)	Petition for Review of Assessment, Form 131
)	Petition No. 41-002-01-1-3-00001
JOHNSON COUNTY PROPERTY TAX)	Parcel No. 91003444040/00
ASSESSMENT BOARD OF APPEALS)	
And BLUE RIVER TOWNSHIP)	
ASSESSOR)	
)	
Respondents.)	

Findings of Fact and Conclusions of Law

On January 1, 2002, pursuant to Public Law 198-2001, the Indiana Board of Tax Review (IBTR) assumed jurisdiction of all appeals then pending with the State Board of Tax Commissioners (SBTC), or the Appeals Division of the State Board of Tax Commissioners (Appeals Division). For convenience of reference, each entity (the IBTR, SBTC, and Appeals Division) is hereafter, without distinction, referred to as "State". The State having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Issues

1. Whether the building should be priced from the General Commercial Kit schedule.
2. Whether the depreciation is correct.

Findings of Fact

1. If appropriate, any finding of fact made herein shall also be considered a conclusion of law. Also if appropriate, any conclusion of law made herein shall also be considered a finding of fact.

2. Pursuant to Ind. Code § 6-1.1-15-3, Mr. Fred McCarter with C.M.I., on behalf of David R. Webb Company, Inc. (Petitioner), filed a Form 131 petition requesting a review by the State. The County Property Tax Assessment Board of Appeals' (PTABOA) Assessment Determination on the underlying Form 130 is dated December 20, 2001. The Form 131 petition was filed on January 16, 2002.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on May 21, 2002, before Administrative Law Judge Paul Stultz. Testimony and exhibits were received into evidence. Mr. McCarter represented the Petitioner. Mr. Tim Barry appeared as a expert witness for the Petitioner. Ms. Sandra Pendleton, Blue River Township Assessor, represented the Township Assessor's Office. Mr. Mark Alexander represented the Johnson County Assessor's Office.

4. At the hearing, the Form 131 petition was made a part of the record and labeled as Board's Exhibit A. The Notice of Hearing on Petition is labeled as Board's Exhibit B.

5. In addition, the following exhibits were submitted to the State:
Petitioner's Exhibit 1 – two page summary of six Tax Court cases.
Petitioner's Exhibit 2 – copy of *Susan J. Barker v. State Board of Tax Commissioners*, 712 N.E. 2d 563 (Ind. Tax 1999).
Petitioner's Exhibit 3 - copy of *Donald G. Morris v. State Board of Tax Commissioners*, 712 N.E. 2d 1120 (Ind. Tax 1999).
Petitioner's Exhibit 4 - copy of *King Industrial Corp. v. State Board of Tax Commissioners*, 699 N.E. 2d 338 (Ind. Tax 1998).

Petitioner's Exhibit 5 - copy of *Componx, Inc. v. State Board of Tax Commissioners*, 683 N.E. 2d 1372 (Ind. Tax 1997).

Petitioner's Exhibit 6 - copy of *Damon Corp. v. State Board of Tax Commissioners*, 738 N.E.2d 1102 (Ind. Tax 2000).

Petitioner's Exhibit 7 - copy of *CDI, Inc. v. State Board of Tax Commissioners*, 725 N.E.2d 1015 (Ind. Tax 2000).

Petitioner's Exhibit 8- copy of *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113 (Ind. Tax 1998).

Petitioner's Exhibit 9 - copy of *Fleet Supply, Inc. v. State Board of Tax Commissioners*, 740 N.E.2d 598 (Ind. Tax 2000)

Petitioner's Exhibit 10 - copy of *Barth, Inc. v. State Board of Tax Commissioners*, 705 N.E.2d 1084 (Ind. Tax 1998).

Petitioner's Exhibit 11 – copy of handout from a January 25, 1995, training session conducted by State employee Terry Knee

Petitioner's Exhibit 12 – copy of State Instructional Bulletin 91-8

Petitioner's Exhibit 13 – copy of 50 IAC 2.2-11-7 Commercial and industrial depreciation tables

Petitioner's Exhibit 14 – three photos of building on parcel #91003412047/00

Petitioner's Exhibit 15 – copy of light pre-engineered kit building checklist for parcel # 91003412047/00

Petitioner's Exhibit 16 - three photos of building on parcel #91003444040/00

Petitioner's Exhibit 17 - copy of light pre-engineered kit building checklist for parcel # 91003444040/00

Petitioner's Exhibit 18 - three photos of building on parcel #91003412049/00

Petitioner's Exhibit 19 - copy of light pre-engineered kit building checklist for parcel # 91003412049/00

6. Mr. McCarter provided a disclosure statement on May 23, 2002, by facsimile. The statement was made a part of the record and labeled Petitioner's Exhibit 20.
7. At the hearing, Mr. Alexander was requested to provide a copy of the subject property record card. The property record card was received from Mr. Alexander

on June 20, 2002, and made a part of the record and labeled Respondent's Exhibit 1.

8. The subject property is located on Thompson Street, Edinburgh, Blue River Township, Johnson County.
9. The Administrative Law Judge did not view the subject property.
10. At the hearing, the parties agreed the year under appeal is 2001 and the values of record are:

Land	\$19,000
Improvements	\$311,400
11. Mr. McCarter testified that his compensation for representing the Petitioner is based on a contingent fee.
12. Mr. Barry testified he was compensated on a hourly rate.

**Issue No. 1- Whether the building should
be priced from the General Commercial Kit schedule.**

13. The PTABOA determined that the building should be priced from the General Commercial Industrial (GCI) schedule. The Petitioner contended that this area is a light pre-engineered structure that should be priced from the General Commercial Kit (GCK) schedule.
14. The following testimony was given:
 - a. Mr. McCarter testified that:
 - i. The photographs show the building has a concrete block exterior wall. (Petitioner's Exhibit 16).
 - ii. The subject building is a Varco Pruden name brand kit building.
 - iii. The checklist provided by Mr. Barry indicates the subject building

has all the identifying clues for kit buildings listed in State Instructional Bulletin 91-8.

- b. Mr. Barry testified that the subject building:
 - i. was built to minimum standards per the Uniform Building Code.
 - ii. was a light pre-engineered building.
 - iii. has a concrete block wall that is not load bearing.
- 15. Mr. McCarter stated that he agreed with the reproduction cost new determined by the PTABOA, which lowered the grade to “D-2”. He asserted that by applying a grade of “D-2,” the building is valued as if it was priced from the General Commercial Kit schedule.
- 16. Mr. Alexander stated that the Petitioner failed to provide evidence to qualify the subject building as a light pre-engineered building. He contended that the State Instructional Bulletin 91-8 is not relevant to the case at hand.

Issue No. 2 - Whether the depreciation is correct.

- 17. The PTABOA determined that the area under appeal should be depreciated from the 40 year life expectancy table. The Petitioner contended that this area should be depreciated from the 30 year life expectancy table.
- 18. The Petitioner contended that light pre-engineered structures are depreciated from the thirty year life expectancy table, per 50 IAC 2.2.
- 19. As noted, Mr. Alexander stated that the Petitioner failed to provide evidence to qualify the subject building as a light pre-engineered building.

Conclusions of Law

- 1. The Petitioner is limited to the issues raised on the Form 130 petition filed with the Property Tax Assessment Board of Appeals (PTABOA) or issues that are

raised as a result of the PTABOA's action on the Form 130 petition. 50 IAC 17-5-3. See also the Forms 130 and 131 petitions authorized under Ind. Code §§ 6-1.1-15-1, -2.1, and -4. In addition, Indiana courts have long recognized the principle of exhaustion of administrative remedies and have insisted that every designated administrative step of the review process be completed. *State v. Sproles*, 672 N.E. 2d 1353 (Ind. 1996); *County Board of Review of Assessments for Lake County v. Kranz* (1964), 224 Ind. 358, 66 N.E. 2d 896. Regarding the Form 130/131 process, the levels of review are clearly outlined by statute. First, the Form 130 petition is filed with the County and acted upon by the PTABOA. Ind. Code §§ 6-1.1-15-1 and -2.1. If the taxpayer, township assessor, or certain members of the PTABOA disagree with the PTABOA's decision on the Form 130, then a Form 131 petition may be filed with the State. Ind. Code § 6-1.1-15-3. Form 131 petitioners who raise new issues at the State level of appeal circumvent review of the issues by the PTABOA and, thus, do not follow the prescribed statutory scheme required by the statutes and case law. Once an appeal is filed with the State, however, the State has the discretion to address issues not raised on the Form 131 petition. *Joyce Sportswear Co. v. State Board of Tax Commissioners*, 684 N.E. 2d 1189, 1191 (Ind. Tax 1997). In this appeal, such discretion will not be exercised and the Petitioner is limited to the issues raised on the Form 131 petition filed with the State.

2. The State is the proper body to hear an appeal of the action of the County pursuant to Ind. Code § 6-1.1-15-3.

A. Indiana's Property Tax System

3. Indiana's real estate property tax system is a mass assessment system. Like all other mass assessment systems, issues of time and cost preclude the use of assessment-quality evidence in every case.

4. The true tax value assessed against the property is not exclusively or necessarily identical to fair market value. *State Board of Tax Commissioners v. Town of St. John*, 702 N.E. 2d 1034, 1038 (Ind. 1998)(*Town of St. John V*).
5. The Property Taxation Clause of the Indiana Constitution, Ind. Const. Art. X, § 1 (a), requires the State to create a uniform, equal, and just system of assessment. The Clause does not create a personal, substantive right of uniformity and equality and does not require absolute and precise exactitude as to the uniformity and equality of each *individual* assessment. *Town of St. John V*, 702 N.E. 2d at 1039 – 40.
6. Individual taxpayers must have a reasonable opportunity to challenge their assessments. But the Property Taxation Clause does not mandate the consideration of whatever evidence of property wealth any given taxpayer deems relevant. *Id.* Rather, the proper inquiry in all tax appeals is “whether the system prescribed by statute and regulations was properly applied to individual assessments.” *Id.* at 1040. Only evidence relevant to this inquiry is pertinent to the State’s decision.

B. Burden

7. Ind. Code § 6-1.1-15-3 requires the State to review the actions of the PTABOA, but does not require the State to review the initial assessment or undertake reassessment of the property. The State has the ability to decide the administrative appeal based upon the evidence presented and to limit its review to the issues the taxpayer presents. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113, 1118 (Ind. Tax 1998) (citing *North Park Cinemas, Inc. v. State Board of Tax Commissioners*, 689 N.E. 2d 765, 769 (Ind. Tax 1997)).
8. In reviewing the actions of the PTABOA, the State is entitled to presume that its actions are correct. “Indeed, if administrative agencies were not entitled to

presume that the actions of other administrative agencies were in accordance with Indiana law, there would be a wasteful duplication of effort in the work assigned to agencies.” *Bell v. State Board of Tax Commissioners*, 651 N.E. 2d 816, 820 (Ind. Tax 1995). The taxpayer must overcome that presumption of correctness to prevail in the appeal.

9. It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. 2 Charles H. Koch, Jr., *Administrative Law and Practice*, § 5.51; 73 C.J.S. Public Administrative Law and Procedure, § 128.
10. Taxpayers are expected to make factual presentations to the State regarding alleged errors in assessment. *Whitley*, 704 N.E. 2d at 1119. These presentations should both outline the alleged errors and support the allegations with evidence. “Allegations, unsupported by factual evidence, remain mere allegations.” *Id* (citing *Herb v. State Board of Tax Commissioners*, 656 N.E. 2d 890, 893 (Ind. Tax 1995)). The State is not required to give weight to evidence that is not probative of the errors the taxpayer alleges. *Whitley*, 704 N.E. 2d at 1119 (citing *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1239, n. 13 (Ind. Tax 1998)).
11. One manner for the taxpayer to meet its burden in the State’s administrative proceedings is to: (1) the taxpayer must identify properties that are similarly situated to the contested property, and (2) the taxpayer must establish disparate treatment between the contested property and other similarly situated properties. *Zakutansky v. State Board of Tax Commissioners*, 691 N.E. 2d 1365, 1370 (Ind. Tax 1998). In this way, the taxpayer properly frames the inquiry as to “whether the system prescribed by statute and regulations was properly applied to individual assessments.” *Town of St. John V*, 702 N.E. 2d at 1040.
12. The taxpayer is required to meet his burden of proof at the State administrative level for two reasons. First, the State is an impartial adjudicator, and relieving

the taxpayer of his burden of proof would place the State in the untenable position of making the taxpayer's case for him. Second, requiring the taxpayer to meet his burden in the administrative adjudication conserves resources.

13. To meet his burden, the taxpayer must present probative evidence in order to make a prima facie case. In order to establish a prima facie case, the taxpayer must introduce evidence "sufficient to establish a given fact and which if not contradicted will remain sufficient." *Clark*, 694 N.E. 2d at 1233; *GTE North, Inc. v. State Board of Tax Commissioners*, 634 N.E. 2d 882, 887 (Ind. Tax 1994).
14. In the event a taxpayer sustains his burden, the burden then shifts to the local taxing officials to rebut the taxpayer's evidence and justify its decision with substantial evidence. 2 Charles H. Koch, Jr. at §5.1; 73 C.J.S. at § 128. See *Whitley*, 704 N.E. 2d at 1119 (The substantial evidence requirement for a taxpayer challenging a State Board determination at the Tax Court level is not "triggered" if the taxpayer does not present any probative evidence concerning the error raised. Accordingly, the Tax Court will not reverse the State's final determination merely because the taxpayer demonstrates flaws in it).

C. Review of Assessments After *Town of St. John V*

15. Because true tax value is not necessarily identical to market value, any tax appeal that seeks a reduction in assessed value solely because the assessed value assigned to the property does not equal the property's market value will fail.
16. Although the Courts have declared the cost tables and certain subjective elements of the State's regulations constitutionally infirm, the assessment and appeals process continue under the existing rules until a new property tax system is operative. *Town of St. John V*, 702 N.E. 2d at 1043; *Whitley*, 704 N.E. 2d at 1121.

17. *Town of St. John V* does not permit individuals to base individual claims about their individual properties on the equality and uniformity provisions of the Indiana Constitution. *Town of St. John V*, 702 N.E. 2d at 1040.

D- Witness Compensation

18. The State's position is that it has the right to make general inquiry regarding, and to consider, the method by which a witness is compensated. Information about the witness's fee can be relevant and necessary in order to evaluate the potential partiality of the witness. A contingent fee arrangement may be considered to inherently affect the objectivity of a witness. The State believes it appropriate to consider the potential of such an arrangement to improperly motivate the witness and adversely affect the reliability of the testimony. It is for these reasons that the State will consider the method of witness compensation in the process of determining the credibility and weight to be given to testimony of a witness whose fee is contingent on the outcome of the issues that he or she is testifying about. This position is supported by the discussion in the case of *Wirth v. State Board of Tax Commissioners*, 613 N.E. 2d 874 (Ind. Tax 1993).

E. Issue No. 1- Whether the building should be priced from the General Commercial Kit schedule.

19. The PTABOA determined that the building should be priced from the GCI schedule, but lowered the grade to "D-2". The Petitioner contended that this area is a light pre-engineered structure that should be priced from the GCK schedule.
20. The State Board's Regulation, 50 IAC 2.2-10-6.1, provides an explanation of how to determine a base rate. Specifically, base rates are given for a range of perimeter to area ratios for specific construction types and for various use and finish types. Models are provided as conceptual tools to use to replicate reproduction cost of a structure using typical construction materials assumed to

exist for a given use type. Use type represents the model that best describes the structure.

21. Because of the numerous models provided, the base rates are divided into four association groupings, namely: (1) General Commercial Mercantile (GCM); (2) General Commercial Industrial (GCI); (3) General Commercial Residential (GCR); and (4) General Commercial Kit (GCK). Three of the four groupings contain use type descriptions in order to aid in selection. The GCK schedule is the exception.
22. "... 'GCK' does not include use type descriptions. This schedule is utilized for valuing preengineered and predesigned pole buildings which are used for commercial and industrial purposes. A format has been developed to value the base building on a perimeter area ratio basis and to adjust the value based on various individual components of the building. Buildings classified as a special purpose design are not valued using the GCK pricing schedule." 50 IAC 2.2-10-6.1(a)(1)(D).
23. In a nutshell, when selecting the appropriate pricing schedule, there are only four factors to be considered in determining whether or not the GCK schedule is appropriate for valuing a structure. These factors are: (1) whether the structure is pole framed; (2) whether the structure is pre-engineered; (3) whether the structure is for commercial or industrial use; and (4) whether the structure is a special purpose designed building. Therefore, if a building is a pre-engineered pole framed building used for commercial or industrial purposes, and is not a special purpose design building, the GCK schedule is the appropriate schedule for valuing the building.
24. Based on a physical inspection of the property, the Petitioner's representative introduced evidence describing characteristics of the subject building, including 26 -24 gauge metal siding on roof and walls, 16 -14 gauge steel used in purlins and girders, 30 foot bay spacing, standard "X" bracing, and a roof pitch of 1:12.

(Petitioner's Exhibit 17). All of these features are characteristic of light pre-engineered structures. This testimony is supported by the Petitioner's photographs (Petitioner's Exhibit 16) showing the exterior and interior of the subject building.

25. Again, the Petitioner bears the responsibility of presenting probative evidence in order to establish a prima facie case. In order to establish a prima facie case, the Petitioner must present evidence sufficient to establish a given fact that if not contradicted will remain fact. The Petitioner has established that the subject building is used for commercial purposes; that the subject building is constructed with metal framing and metal siding; and that the subject is pre-engineered. The evidence is sufficient to indicate that the incorrect cost schedule may have been selected. The burden has now shifted to the PTABOA to present evidence to contradict the Petitioner's evidence and justify its decision with substantial evidence.
26. The PTABOA, without explanation, concluded that the Petitioner's evidence was "irrelevant". (Board's Exhibit A, Attachment to the Form 131 petition).
27. To repeat, the sole factors given to determine the use of the GCK schedule rather than the GCM or GCI schedules are (1) whether the structure is pole framed; (2) whether the structure is pre-engineered; (3) whether the structure is for commercial or industrial use; and (4) whether the structure is a special purpose design building. 50 IAC 2.2-10-6.1 and 50 IAC 2.2-11-6. The PTABOA did not present any evidence to show that the subject building was not pole framed; pre-engineered; and for commercial or industrial use. Furthermore, the PTABOA did not present evidence to demonstrate that the subject building was a special purpose designed building. The PTABOA has fallen short of its burden.
28. The State therefore determines that the contested area of the building should be assessed using the GCK schedule.

29. The State recognizes that the PTABOA lowered the grade of the building from “C” to “D-2”. The State further recognizes that the parties agreed the reproduction cost new of the building is now correct as a result of this adjustment to grade.
30. However, “the State Board is not permitted to use a grade adjustment in lieu of a kit adjustment. See *Barth, Inc.*, 699 N.E. 2d at 805 (‘Under the State Board regulations, a building must be given a kit adjustment if it qualifies for that adjustment.’) (citations omitted).” *Morris v. State Board of Tax Commissioners*, 712 N.E.2d 1120, 1125 (Ind. Tax 1999). This admonition is equally applicable to the PTABOA.
31. Although the local officials applied a grade of “D-2” to the contested structure, this grade is based on a comparison to the GCI models.
32. Because the building will now be priced using the GCK schedule, a comparison to GCI models to determine the grade is no longer appropriate. For the assessment to be correct, the grade must be adjusted, based on the GCK descriptions. See *Barth vs. State Board of Tax Commissioners*, 699 N. E. 2d 800 (Ind. Tax Court, 1998).
33. As noted, the parties agreed that the reproduction cost new determined by the PTABOA is correct. Grade may therefore be used to reconcile any difference between the reproduction cost determined by the use of the GCK schedule and the reproduction cost agreed upon by the parties.
34. Repeating, the State determines that the building under appeal should be assessed using the GCK schedule. There is a change in the assessment as a result of this issue.

F. Issue No. 2 - Whether the depreciation is correct.

35. The PTABOA determined that the area under appeal should be depreciated from the 40 year life expectancy table. The Petitioner contended that this area should be depreciated from the 30 year life expectancy table.
36. “**Physical depreciation** is determined by the combination of age and condition. Each type of building has a life expectancy that is determined by the building components and the use of the building. By applying these factors, the correct physical depreciation can be applied to the building. The following tables are used to depreciate commercial and industrial buildings:
- (1) The thirty (30) year life expectancy table.
 - (2) The forty (40) year life expectancy table.
 - (3) The fifty (50) year life expectancy table.
 - (4) The sixty (60) year life expectancy table.”
- 50 IAC 2.2-10-7(c) (Emphasis is contained in the original).
37. The commercial and industrial depreciation tables identify types of buildings to be depreciated using the 30 year life expectancy table: wood joist offices, wood joist manufacturing facilities, low-cost motels, light pre-engineered buildings and all wood joist construction other than apartments. 50 IAC 2.2-11-7.
38. As discussed, the State has determined the subject building is a light pre-engineered building; the structure must therefore be depreciated from the 30 year life expectancy table. There is a change in the assessment as a result of this issue.

Summary of Final Determination

Determination of Issue 1- *Whether the building should be priced from the General Commercial Kit schedule.*

39. The building should be assessed from the General Commercial Kit schedule. There is a change in the assessment as a result of this issue.

Determination of Issue 2 - *Whether the depreciation is correct.*

40. The building is to be depreciated from the 30 year life expectancy table. There is a change in the assessment as a result of this issue.

The above stated findings and conclusions are issued in conjunction with, and serve as the basis for, the Final Determination in the above captioned matter, both issued by the Indiana Board of Tax Review this ____ day of _____, 2002.

Chairman, Indiana Board of Tax Review